THE HON'BLE SRI JUSTICE R.KANTHA RAO

APPEAL SUIT No. 2437 of 2000
AND
CROSS-OBJECTIONS (SR) No. 91170 of 2000

Date:03.12.2013

Between:

Cherukuri Satyavathi (Died per L.R.) …Appellant

And

Velaga Kamala and two other

…Respondents

THE HON'BLE SRI JUSTICE R.KANTHA RAO

APPEAL SUIT No. 2437 of 2000
AND
CROSS-OBJECTIONS (SR) No. 91170 of 2000

COMMON JUDGMENT:

APPEAL SUIT No. 2437 of 2000: The deceased-first appellant Cherukuri Satyavathi who is the second wife of Cherukuri Venkaiah filed the present appeal against the preliminary decree, dated 31.07.2000 in O.S.No.226 of 1987 passed by the Additional Senior Civil Judge, Guntur. Pending appeal, Cherukuri Satyavathi died and the second appellant N. Shanker Prasad was brought on record as her legal representative under the deed, dated 19.09.1994. N. Shanker Prasad is a stranger to the family and claims rights through the aforementioned Will.

CROSS-OBJECTIONS (SR) No. 91170 of 2000: The cross objector-3rd respondent – Cherukuri Ramakrishna who is the adopted son of late Cherukuri Venkaiah filed the present cross-objections against the preliminary decree, dated 31.07.2000 in O.S.No.226 of 1987 passed by the Additional Senior Civil Judge, Guntur.

In this judgment, for the sake of convenience, the parties will be referred to as 'the plaintiffs' and 'the defendants'.

The facts essential for disposing of the appeal may be stated as follows:

Cherukuri Venkaiah is the material grand father of the plaintiff and the second defendant. Varalakshmamma is the first wife of Venkaiah. He had only daughter Anasuyamma who is the mother of the plaintiff and the second defendant. Late Venkaiah married the first defendant as his second wife. He has no issues through the first defendant. Late Venkaiah had no sons. Anasuyamma died intestate in the year 1963. She had two daughters the plaintiff-Velaga Kamala and the second defendant-Vadlamudi Sharada. According to the plaintiff on the death of plaintiff's material grand-mother, his estate devolved on the widow, the first defendant herein and the deceased daughter's daughter the plaintiff and the second defendant. Venkaiah died intestate on 20.05.1979. According to the plaintiffs, the plaintiff and the second defendant demanded the first defendant for partition of the plaint schedule property and deliver her share. As the request was not acceded to, she issued a notice dated 21.08.1986 for which the first defendant gave a reply on 03.09.1996 mentioning therein that she adopted third defendant under the adoption deed dated 12.02.1979. The version of the plaintiff is that the first defendant never adopted the third defendant.

With the aforesaid pleadings, the plaintiff filed the suit for partition of the plaint schedule property by metes and bounds and to allot one such share to the plaintiff.

The first defendant contended in the written statement as follows:

Cherukuri Venkaiah's first wife Varalakshmamma and plaintiff's mother are congenital idiots. Without knowing the said fact, Venkaiah married the first wife Varalakshmamma and after the said marriage, the parents of Varalakshmamma did not send to her matrimonial home for

some time under the apprehension that the mental condition of Varalakshmamma would be disclosed. It is further alleged that Venkaiah had no marital happiness and he had to look-after the welfare of his mother, his children with the assistance of his elder brother Cherukuri Suryanarayana. It is said that he approached the father of Varalakshmamma and her junior paternal uncle Avula Sambasiva Rao, an Advocate of Guntur and expressed his difficulties to him that he could not bear the problem throughout life and he had no strength to maintain the family as nobody would come forward to marry him. Venkaiah promised that he would strictly obey whatever decision Sri A.Sambasiva Rao would take. It was decided by Sri A.Sambasiva Rao that the father of Varalakshmamma should keep in her custody and guardianship along with her daughter Anasuyamma to look-after the welfare of her Ac.5.00 of wet land and gold ornaments etc. presented by the parents of Varalakshmamma shall be returned to her and Cherukuri Venkaiah has nothing to do with Varalakshmamma and her daughter. The said decision given by Sri A.Sambasivarao was agreed upon and approved by Suryananarayana his brother and Venkaiah and father of Varalakshmamma. Therefore, according to the first defendant, in view of the said decision, the defendant's husband ceased to have any connection with Varalakshmamma or his daughter Anasuyamma. It is further stated that the first defendant was given in marriage to Cherukuri Venkaiah about 40 years prior to the filing of the written statement by her. Varalakshmamma died in the year 1950 and Anasuyamma died in the year 1963. Varalakshmamma and her children have nothing had nothing to do with the schedule property.

Nextly, it is alleged that the first defendant's husband was the Sarpanch of Thakkellapadu village. He contracted several debts

which were discharged by the first defendant. Her husband Venkaiah died in the year 1978 and subsequently she adopted the third defendant.

The first defendant filed additional written statement which is as follows:

After the death of her husband, she was brought to Guntur, her relatives represented her to avoid any claims by her co-wife's progeny against her property, a formal adoption of her sister's son Ramakrishna which would ward off the trouble. Accordingly, she adopted the third defendant.

Later on, it is said that the second defendant issued her a notice in 1982 claiming a share which was replied in 1986. The plaintiff gave a notice, thereafter in 1987 the plaintiff filed the suit. The first defendant handed over the notice to the son of Guntupalli Ramachaudhary and he prepared reply and she was made to sign on it. Later, when the suit came up for trial, she was called and when she was appraised of the adoption and its effect, she realized danger and then engaged a different advocate who advised to file the written statement on behalf of first defendant.

Second defendant filed written statement contending that the first defendant married Varalakshmamma while his first wife was alive, and therefore, the marriage between Venkaiah and first defendant is void and she is not entitled to any share in the property. According to the second defendant, the plaintiff and second defendant are entitled for equal shares out of the suit schedule property. Her mother died in the year 1963 intestate and her maternal grandfather Venkaiah died on 28.05.1978 intestate. He is entitled for half share in the suit property.

Therefore, he claims half share in the suit schedule property.

The third defendant adopted the written statement of first defendant initially and at a later point of time, he filed a detailed written statement which is as follows:

The third defendant's natural mother and the first defendant are twin sisters. The first defendant's husband died intestate in May, 1978. The first defendant was having love and affection for this defendant and expressed the desire to take him in adoption. When she persisted her request for adoption, his natural parents agreed to give him in adoption on the condition that he should not alienate the properties for any encumbrances or otherwise dispose of or sell away any of the properties which her husband died possessed of. According to the third defendant, this condition was made because he would lose all the rights in the natural family in the event of adoption and with the view the third defendant should have a status of aurasa son of late Venkaiah as if he was adopted during the life time of venkaiah. The first defendant agreed for the said condition and accordingly the third defendant was adopted by her on 01.10.1979 as per Hindu Sastras and customary rites in the presence of relatives and friends before whom he agreed to abide the aforementioned conditions. A registered adoption deed dated 15.10.1978 was also executed. The first defendant took him in adoption on her volition and complied with all the requirements and formalities including giving and taking as per age-old custom among the members of Kamma caste whereby a boy aged more than 15 yeas also can validly be adopted.

The first defendant contested the suit by engaging a counsel on her behalf and also on behalf of third defendant till 1997. First

defendant initially filed written statement and the same was adopted by the third defendant. According to the third defendant, the first defendant suddenly and surprisingly without his knowledge changed the advocate and engaged another advocate on her behalf and filed a written statement stating that he was not her adopted son and no valid adoption took place and also challenging the adoption dated 15.10.1979 without filing a separate suit for cancellation of adoption. Contending as above, the third defendant sought to dismiss the suit.

Basing on the above pleadings, the following issues were framed:

1) *Whether the first defendant adopted the third defendant and the said adoption is true?*
2) *Whether the arrangement pleaded by the first defendant is true?*
3) *Whether the plaintiff is entitled for 1/3rd share?*
4) *To what relief?*

Subsequently, the following additional issues were framed on 21.08.1988:

1) *Whether the first defendant is legally wedded wife of late Ch.Venkaiah?*
2) *Whether the plaintiff is entitled for mesne profits?*

The following another additional issue was framed on 21.01.2000?

Whether the suit is barred by time?

Before proceeding to discuss the issues involved in the appeal, it is necessary to state the admitted facts in this case. Varalakshmamma is the first wife of Venkaiah. First defenant is the second wife of Venkaiah. He had a daughter by name Anasuyamma. The plaintiff and the second defendant are the daughters of

Anasuyamma.

One of the contentions raised by the plaintiff and the first defendant in the course of arguments before the learned trial Court is that Venkaiah married the first defendant during the life time of Varalakshmamma. Therefore, she cannot be said to be the legally wedded wife of Venkaiah, though before the death of Venkaiah, the first defendant took possession of his properties. The status of first defendant is only that of a trespasser and she has no right to claim any share in the property and since then she had been in possession and enjoyment of the properties.

The question therefore would be whether the first defendant (Cherukuri Satyavathi) is the legally wedded wife of late Venkaiah. First defendant was examined as DW-3 and she stated in her evidence that she married Venkaiah four years prior to the death of Varalakshmamma i.e. in the year 1946 or so. According to the plaintiff as stated in her pleadings, Varalakshmamma died in the year 1956 and after the death of Varalakshmamma, Venkaiah married the first defendant. Upon considering the entire evidence available on record, the trial Court rightly recorded a finding that there is no specific evidence forthcoming as to the fact whether Venkaiah married the first defendant during the life time of Varalakshmamma i.e. four years prior to the death of Varalakshmamma as contended by the first defendant or after the death of Varalakshmamma. The trial Court took into consideration the pleadings of the plaintiff where she had stated that Venkaiah married the first defendant after the death of Varalakshmamma. Second defendant however filed her written statement and also gave evidence to that effect that during the life time of Varalakshmamma, Venkaiah married the first defendant after

passing of the Act, 1949 and therefore, she contended that the marriage of first defendant with Venkaiah is void. The second defendant was examined as DW-1 and she stated before the trial Court that her maternal grandfather Venkaiah brought first defendant to his house while his first wife Varalakshmamma was alive. There was no marriage between the first defendant and Venkaiah and that she is not his legally wedded wife. Except her oral testimony, there is no other evidence on record in support of the version of the second defendant that Venkaiah brought the first defendant to his house while Varalakshmamma was alive and there was no valid marriage between Venkaiah and the first defendant. The evidence of DW-2 was to the effect that Varalakshmamma is the wife of Venkaiah. Six months prior to the death of Varalakshmamma, Venkaiah brought first defendant to his house. The evidence of DW-2 also cannot be said to be authenticated evidence as to when in fact Venkaiah married the first defendant. The learned trial Court found that there was no cogent and convincing evidence as to the fact Venkaiah married the first defendant during the life time of Varalakshmamma after passing of 1949 Act. The learned trial Court in the given situation took into consideration the pleadings of the plaintiff. The plaintiff clearly mentioned in the plaint and also in her

Ex.A-1 notice issued to the first defendant that first defendant married Venkaiah after the death of Varalakshmamma. The learned trial Court observed that the plaintiff and first defendant were not born by the date of marriage of first defendant with Venkaiah and therefore, their version as to when the marriage of first defendant was performed with Venkaiah cannot be given much credence. The learned trial Court also took into consideration the admitted fact that for a long time, Venkaiah and first defendant lived as wife and husband under the

same roof and therefore, in the absence of any reliable evidence that Venkaiah married the first defendant after passing of 1949 Act, while Varalakshmamma was alive, rightly drew a presumption that there is a valid marriage between the first defendant and Venkaiah. The presumption of valid marriage was mainly drawn basing on the averments made in the plaint and Ex.A-1 notice issued by the plaintiff whereunder she specifically admitted that Venkaiah married the first defendant after the death of Varalakshmamma. Therefore, I absolutely see no ground to interfere with the finding recorded by the learned trial Court that the first defendant is the legally wedded wife of late Venkaiah.

As regards the contention urged by the first defendant that Varalakshmamma and plaintiff's mother were congenital idiots. Venkaiah married Varalakshmamma without knowing the said fact that after marriage, Varalakshmamma was not sent to her matrimonial home for some time under the apprehension that the mental condition of Varalakshmamma would be revealed, thereafter a dispute raised in the presence of Sri Avula Sambasivarao, an Advocate at Guntur and the brother of Venkaiah by name Suryanarayana, pursuant to the said dispute, there is a family arrangement, according to which, Venkaiah gave 5 acres of land and some gold ornaments to Varalakshmamma and some other property which was given by Venkaiah to Varalakshmamma and Anasuyamma wherein it was agreed upon that Varalakshmamma and her daughter Anasuyamma would not claim any share in the property of late Venkaiah. According to the first defendant, after the said family arrangement, Varalakshmamma and her daughter Anasuyamma relinquished their share in the property and therefore, the plaintiff and the second defendant cannot claim any

rights in the property. However, before the trial Court either Sri Avula Sambasivarao or Sri Suryanarayana were not examined to prove the said family arrangement. The learned trial Court rightly held that from pleadings in the written statement and the fact that the first defendant is in possession of the property is not enough and the first defendant has to prove by adducing enough evidence that the family arrangement by appropriate evidence. Having found that except the pleadings in the written statement, there is no other evidence worth considering was forthcoming on the aspect of aforesaid family arrangement. The learned trial Court recorded a specific finding that the first defendant failed to prove the family arrangement in the written statement and rightly answered the issue in favour of the plaintiff repelling the contentions of the first defendant that she perfected the title to the property by adverse possession.

As regards the limitation to claim share in the property, admittedly late Venkaiah died on 20.05.1978. The second defendant and the plaintiff issued notices to the first defendant in the year 1982 claiming share in the property stating therein that though they are demanding share in the property, the first defendant has not been responding to their demand. The first defendant is the legally wedded wife of late Venkaiah. Anasuyamma is his daughter through his first wife. The plaintiff and the second defendant are the daughters of Anasuyamma. Exs.A-1 and B-1 reveal that only when the first defendant denied their share in the property, they issued notices and thereafter the plaintiff filed the suit. The plaintiff filed suit in the year 1987. Further, the property would be joint family of the first defendant, the plaintiff and the second defendant limitation to claim the share in the property would not arise unless there is a specific denial by the first

defendant. The limitation in the strict sense would not apply to the joint family members unless ouster is specifically pleaded by one of the sharers claiming adverse possession. In the instant case, the learned trial Court rightly held that having regard to the facts and circumstances of the case, the plea of limitation is not available to the 2nd defendant and therefore, recorded a specific finding correctly that the claim of the plaintiff as well as the first defendant for a share in the property is within time.

Next issue requires to be examined in this appeal is whether the adoption of third defendant is valid, if so, to what effect.

The contention of the third defendant is that Venkaiah died in May, 1978, thereafter the first defendant adopted the third defendant on 01.10.1979 as per Hindu Sastras and customary rites in the presence of relatives and friends. A registered adoption deed dated 15.10.1978 was also executed. He pleaded in the written statement that his natural parents agreed to give him in adoption, all formalities and requirements including giving and taking in adoption took place. He also specifically pleaded that among the members of Kamma caste a boy more than 15 years also can be validly adopted. His contention is that after the adoption he lost all rights in his natural family and he should have a status of Hindu son of late Venkaiah as if he was adopted during his life time. On the said basis, he claims 1/4th share in the property of Venkaiah. Initially, the first defendant filed the written statement and the same was adopted by the third defendant. Subsequently, the first defendant changed her advocate and also took a different stand to the effect that there was no valid adoption took place and that the third defendant is not her adopted son.

It is also contended by the third defendant that at the time of adoption, first defendant represented that she would not alienate the property possessed by her from her husband and relying on representation only his natural parents gave him in adoption to the first defendant. The version of third defendant that he is recognized as son of the first defendant and her late husband Venkaiah, his name was also mentioned in the records as per Ex.B-4 in the gazette publication as the son of the first defendant. After the death of Venkaiah, the third defendant is entitled to 3/4th share out of the properties of Venkaiah and first defendant is entitled to 1/4th share only.

It was contended on behalf of the first defendant that after the death of Venkaiah in the year 1978, the first defendant took possession of the property as absolute owner, she continued as owner of the property having exclusive possession and enjoyment of the same as absolute owner. During her life time, even if it is considered that third defendant is her adopted son, he is not entitled to any share in the property. It was also contended that third defendant was aged about more than 15 years by the time of Ex.B-3 adoption deed and there is no valid adoption. The evidence on the issue of adoption is that of first defendant who is examined as DW-3, third defendant who is examined as DW-4, natural father of third defendant who is examined as DW-5, the attestor of Ex.B-3 examined as DW-6, an elder who was present at the time of adoption was examined as DW-7.

In her notice Ex.A-2 dated 23.09.1986 issued to the plaintiff, the first defendant mentioned third defendant as her adopted son and also specifically stated that she took him in adoption after the death of her husband on 01.10.1979. Ex.B-3 adoption deed is a registered deed. Initially in her written statement, first defendant stated that third

defendant is her adopted son. Her plea from the beginning till 1999 when she filed an interlocutory application challenging the adoption after changing her advocate was that third defendant is her adopted son. A gazette publication was made under Ex.B-4 showing that the surname of third defendant was changed and he is the son of first defendant. Obviously, at a latter stage of proceedings, first defendant changed her mind and took the plea that adoption of third defendant is not valid and therefore, third defendant is not her adopted son. This apart, DWs.4 to 7 have categorically stated in their depositions that third defendant was adopted by first defendant on 01.10.1979 under adoption deed. All the ceremonies including giving and taking third defendant in adoption took place. The learned trial Court rightly observed that since third defendant was adopted under a registered adoption deed, there is a valid presumption in law in favour of adoption to the effect that adoption has been made by complying with the provisions of the Act as well as performing of the ceremonies required for adoption. Under aw, the burden is on the person who denies the adoption to prove that Ex.B-3 adoption deed is a nominal document and there is no adoption. Absolutely no evidence is let in by the first defendant to discharge her burden to show that there was no valid adoption. As regards the age of the third defendant on the date of adoption, obviously third defendant was more than 15 years of age.

The contention of the third defendant is that an individual aged more than 15 years of Kamma community can be validly taken in adoption. In **ATLURI BRAHMANANDAM (DIED) THROUGH L.Rs. v. ANNE SAI BAPUJI**[1], the Hon'ble Supreme Court referring to a judgment of Division Bench of this Court reported in 1964 recognizing a custom in Andhra Pradesh permitting a person aged more than 15

years in Kamma community can be taken in valid adoption held that existence of custom in Kamma community permitting adoption of persons above age of 15 years proved by respondents by leading cogent and reliable evidence and the appellant failed to challenge the said evidence and also to disprove the adoption. Therefore, according to the Supreme Court, the adoption is valid.

The aforesaid judgment was rendered by the Supreme Court with regard to the identical facts. In the instant case also, the specific plea of the third defendant is that though he was aged more than 15 years, he can be validly taken in adoption and he adduced evidence to that effect before the trial Court. Therefore, in the instant case, the third defendant could be able to establish by convincing evidence that he was validly adopted by the first defendant under Ex.B-3 adoption deed dated 15.10.1979. Therefore, the finding of the learned trial Court that the third defendant is the adopted son of the first defendant is upheld in the present appeal.

Then the next question would be what is the effect of adoption. The contention of the third defendant is that though he was adopted by first defendant subsequent to the death of Venkaiah, he is considered to be the aurasa son of late Venkaiah and therefore, he has share in the property even during the life time of the first defendant.

On the other hand, it is the contention of the first defendant that even if it is considered that third defendant is her adopted son, he cannot claim share in the property during her life time since by virtue of the adoption, the third defendant cannot divest all her rights which have already been vested in her after the death of Venkaiah.

In this context, it is essential to peruse the contents of Ex.B-3 adoption deed. The learned trial Court mentioned in its judgment that the first defendant agreed in Ex.B-3 adoption deed that she will not alienate the property after the adoption of third defendant. But, perusal of Ex.B-3 adoption deed does not show that there is any such recital in the adoption deed. In the adoption deed it is only mentioned that after the adoption third defendant was accepted as adopted son of first defendant and late Venkaiah and after the adoption, the third defendant will have the rights in the property as if he is the aurasa son of late Venkaiah with full rights. In **NAMDEV VYANKAT GHADGE AND ANOTHER v. CHANDRAKANT GANPAT GHADGE AND OTHERS**[2], the Hon'ble Supreme Court held that on the death of coparcener, joint family properties vest in his heirs, the son adopted by widow of another deceased coparcener after death of sole surviving coparcener, cannot divest properties vested in heirs cannot claim any share. The Hon'ble Supreme Court held as follows:

> *"It is plain and clear that an adopted child shall be deemed to be the child of his or her adopted father or mother for all purposes with effect from the date of adoption as is evident from the main part of Section 12. Proviso (c) to Section 12 in clear terms states that the adopted child shall not divest any person of any estate, which vested in him or her before the adoption. In the case of Dharma aforementioned, adopted son became member of coparcenary with Dharma and there was no question of divesting of any property already vested."*

The Hon'ble Supreme Court approved the ratio laid down in Full Bench of Bombay High Court in **JIVAJI ANNAJI v. HANMANT RAMCHANDRA**[3] wherein the Bombay High Court held as follows:

> *"Adoption relates back to the death of the adopting father and an adopted son must be looked upon as if he was in existence*

at the date of the death of the adopting father, but it is not a correct proposition to say that the rights of adopted son are in all respects identical with that of a natural born son. The principle of relation back is not an absolute principle but it has certain limitations."

The Hon'ble Supreme Court also referred to the judgment in **AMARENDRA MANSINGH v. SANATAN SINGH**[4] wherein it has been laid down that according to law as laid down in the decided cases, an adoption after the death of a collateral does not entitle the adopted son to come in as heir of the collateral. Thus, the Hon'ble Supreme Court after reviewing various judgments has laid down that the adopted son cannot divest properties vested in the heirs so as to claim any share. Therefore, in the instant case, the finding recorded by the trial Court that third defendant is not entitled to any share during the life time of first defendant is upheld and the other finding that the first defendant has no right to alienate the property during her life time and she is entitled to enjoy the properties till her death is set aside.

During the pendency of the appeal before this Court the first defendant (first appellant) Cherukuri Satyavathi died and thereafter one N.Shanker Prasad filed CMP No.8380 of 2001 to bring him as appellant No.2 as legal representative of the deceased-first appellant on the ground that the first defendant executed a registered Will dated 19.10.1994 in his favour and registered the same on 21.10.1994. He was brought on record as the second appellant. However, this Court directed the trial Judge to record a finding as to whether Ex.B-1 is true and genuine. Before the learned trial Judge, both parties let in evidence. On record, Mr.N.Sankar Prasad and PWs.1 to 3 were examined and Exs.A-1 to A-16 were marked. On behalf of the respondents, RW-1 was examined and Exs.B-1 to B-8 were marked.

The learned trial Judge having gone through the entire evidence on record, recorded a finding that PW-1, the propounder of the Will failed to prove that the executants executed the Will Ex.A-1 voluntarily with her free consent and ultimately held that Ex.A-1 Will is not genuine one. The said finding is also challenged by the second appellant Mr.Shanker Prasad in this appeal.

In **DOKALA BUCHIRAJU v. DOKALA BANGARAMMA (DIED) by L.R.**[5], the learned single Judge of this Court held that bringing a person on record as legal representative of a deceased party in a suit is only for the purpose of representing the estate of the deceased, such an order passed in a summary enquiry in terms of Order 22, Rule 5 of C.P.C. does not operate as *res judicata* in subsequent proceedings. According to the learned single Judge, the question whether a person can be brought on record as legal representative was one of the contesting parties to the suit, is only for the purpose as to whether he can continue the suit or not, but it cannot be regarded as a question which arising in the suit itself being only a matter collateral to the suit and any decision arrived at cannot operate as *res judicata*.

In this case, therefore, I am not inclined to examine the merit of the finding recorded by the learned trial Judge in I.A.No.764 of 2001 in O.S.No.226 of 1987 relating to C.M.P.No.8380 of 2001. Since the finding recorded by the learned trial Judge does not preclude the second appellant-N.Sankar Prasad to institute a fresh suit basing on the registered Will allegedly executed by Cherukuri Satyavathi, the first appellant, the validity of the Will is not at all necessary for deciding the issues involved in the present appeal. This point is answered

accordingly.

The final question therefore would be as to the shares for which the respective parties are entitled to. In this appeal, the finding of the trial Court that the first defendant is the legally wedded wife of Venkaiah is affirmed. Admittedly, Venkaiah died on 25.09.1978 i.e. subsequent to coming into force of Hindu Marriage Act, 1956. The first defendant, plaintiff as well as second defendant are Class-I heirs under Section 8 of the Hindu Marriage Act, 1956. They are therefore, as per Section 8, are entitled to equal shares in the properties of late Venkaiah. However, the plaintiff in the suit claimed 1/4th share. In her notice, she admitted that the first defendant has half share in the property, she has 1/4th share and the second defendant has 1/4th share in the property. Consequently the first defendant is entitled to ½ share, the plaintiff is entitled to 1/4th share and the second defendant is entitled to 1/4th share in the property. Thus, the finding of the trial Court relating to allotment of shares to the parties to the suit is also affirmed.

For the foregoing reasons, the decree and judgment passed by the trial Court is affirmed. Consequently, the appeal and the cross-objections are dismissed without any order as to costs. Miscellaneous applications, if any, filed in these cases shall stand dismissed.

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R.KANTHA RAO, J

Date:03.12.2013
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THE HON'BLE SRI JUSTICE R.KANTHA RAO

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[1] (2010) 14 SCC 466

[2] AIR 2003 sc 1735

[3] AIR (37) 1950 Bom 360

[4] 35 Bom LR 859 = AIR (20) 1933 PC 155

[5] 1999(1) ALD 676